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AN INCIDENT OF WAR

“BY ORDER OF THE KAISER.”

BY
ARCHIBALD HURD.

London:
SIR JOSEPH CAUSTON & SONS, LIMITED.

1916.



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AN INCIDENT OF WAR.

“BY ORDER OF THE KAISER.”

BY ARCHIBALD HURD.

There is no such thing as international law, as that term is frequently used. That may seem a hard saying, but it is a fact which becomes apparent to belligerents and neutrals when war is in progress. Nothing contributes more powerfully to the recognition of that truth than the varying claims and objections which are raised whenever a blockade is declared.

The late Lord Salisbury, in a speech on the proposal to establish an International Court of Arbitration, he being at the time Prime Minister of England, remarked that “international law has no existence in the sense in which the term ‘law’ is usually understood. It depends generally upon the prejudices of writers of textbooks. It can be enforced by no tribunal, and, therefore, to apply to it the phrase ‘law,’ is to some extent misleading.” Objections have also been raised to the word “international,”

because the law, such as it is, applies to states and not to nations.

Until the London Conference was held a few years before the opening of the war, no attempt had been made even to codify the customs and the usages which should be observed at sea during hostilities, either by belligerents towards each other or by belligerents towards neutrals. The task of codifying the naval laws had only recently been completed, and embodied in the Declaration of London, when war revealed serious flaws in this instrument upon which the representatives of the Powers had expended so much labour in order to provide a document which all states might accept, whether they were engaged in war or were merely spectators. To-day there is hardly a shred or tatter of the Declaration of London remaining.

Not only is that a fact, but the German War Executive have violated even the laws of humanity which hitherto had been universally accepted by all the civilised nations of the world. Among the laws of humanity there is, for example, none which has hitherto been held in greater respect than the consideration due to non-combatants who may become the unwilling victims of war. Take the case of passengers on board ships captured at sea. The German

Prize Code, which is now supposed to be enforced, laid down two stipulations :—

(a) “ During a war the commanders of H.M. ships of war have the right to stop and search enemy and neutral merchant vessels, and to seize—and, in exceptional cases, to destroy—the same, together with the enemy and neutral goods found thereon.

(b) “ Before proceeding to the destruction of the vessel, the safety of all persons on board, and, so far as possible, their effects, is to be provided for, and all ships’ papers and other evidentiary material, which, according to the views of the persons at interest is of value for the formulation of the judgment of the prize court, are to be taken over by the commander.”*

The German Prize Law is also very specific with reference to visit and search of suspicious vessels. Germany, in the destruction of all prizes, with the exception of the “ Appam,” which had on board German prisoners—precious representatives of “ kultur ”—has thrown to the winds her own naval code and simultaneously torpedoed those dictates of humanity which in former wars of modern times belligerents always observed. She has added to the crime

* Paragraphs 1 and 116 German Prize Code. Translated by Charles H. Huberich, Counsellor at Law, Berlin, Hamburg, Paris and the Hague, and Richard King.

which she committed in the early days of the struggle when she massacred Belgium, the high crime of murder on the high seas. She has not only murdered defenceless men and innocent women travelling by sea, but she has slaughtered, deliberately and in cold blood, hundreds of children, who have been left with callous indifference to drown. If the two German submarines which sank the "Lusitania," and which were of a size to give accommodation to scores of children, huddled together, it may be, had stood by and made some effort to rescue those unhappy little mortals, the crews would have contributed in some measure palliation of a crime which stands unique in the annals of humanity. But the fact is that the Germans are a people alone and apart. They have always refused to recognise any law except such as happened at the moment to run parallel with their own interests.

An illustration of the German attitude towards international law was furnished in 1898 after Admiral Dewey, now the honoured president of the General Naval Board of the United States, had won his victory over Admiral Montojo, in Manila Bay. Admiral Dewey's position was one of no little embarrassment. He had to declare a blockade, and he had been

informed that the Spanish warships "Carlos V.," "Pelayo," and "Alphonso II.," with some transports, had left Spain for the East, presumably with the intention of defending Spanish interests at Manila. These ships had a displacement exceeding that of the United States squadron; and they mounted two 12·6 inch and four 11 inch guns, while the largest weapon at Admiral Dewey's command was the 8 inch gun. The Admiral was advised that one United States monitor was on her way and that another would follow. Would those essential ships reach him in time? That was the question at the moment when Admiral Dewey declared his blockade.

Foreign men-of-war began to arrive in the Bay to protect the interests of their nationals. The British Fleet was soon represented by an obsolescent armoured cruiser, the "Immortalité," and a small gunboat, the "Linnet"; the French by a moderate sized cruiser, and the Japanese by a vessel of approximately the same power. "Our flagship," the Admiral records in his autobiography, "was off Cavite; our colours were flying over the Cavite naval station, and our authority was paramount in the Bay. In view of these facts, the British, French and Japanese saw and acted on the obvious propriety—as foreign men-of-war did in the Civil War—

of reporting to the Commander-in-Chief and asking where they should anchor."

Not so, however, the Germans. The first of the German ships, the "Irene," though she had had the news of the declaration of the blockade, steamed by the "Olympia," the American flagship, without stopping and dropped anchor where she chose. Admiral Dewey generously concluded that the captain of this ship of the youngest navy in Europe "might not be familiar with the customs and the laws of blockade." The second German ship, the "Cormoran," came in at 3 o'clock in the morning. She paid no heed to the hail of the American steam launch which was sent to board her, and it was not until the "Raleigh" fired a shot across her bows that she stopped in the very act of running in towards the American squadron in the dark. Admiral Dewey was on the alert, as the "Cormoran," for all he knew, might have been an enemy ship flying the German colours and intent upon ramming one or other of the vessels under his command. Then, to his surprise, the "Kaiserin Augusta," the flagship of Vice-Admiral von Diederichs, entered the harbour with a German transport, the "Darmstadt," bringing 1,400 men as relief crews for the German men-of-war. The

transport had on board a force of men nearly equal to the total number of the American crews, and she remained in the harbour for four weeks, apparently waiting any turn which events might take.

Admiral Dewey, with a comparatively small naval force under his orders, was in a position of difficulty and embarrassment, particularly in view of the news of the eastward voyage of the powerful Spanish ships. "As my rank," he records, "was inferior to Vice-Admiral von Diedrichs' I made the first call in the usual exchange of visits. In the course of conversation I referred to the presence of the large German force and to the limited German interests in the Philippines (there was only one German commercial house in Manila), and this in a courteous manner, amounting to a polite enquiry, which I thought was warranted in view of the fact that six days had elapsed without the "Darmstadt" transferring her men. To this the Vice-Admiral answered, 'I am here by order of the Kaiser, sir'; from which I could only infer that I had expressed myself in a way that excited his displeasure."

The number of German men-of-war was in a day or two increased to five, two of them having a heavier displacement than any of Admiral

Dewey's small squadron. The battleship "Kaiser" followed the example of the other vessels: she came in after dark, and paid no attention to the launch, flying the American flag, which was sent to board her. On the following morning she had the grace to steam over to Cavite and formally report her arrival. Every incident must have impressed Admiral Dewey with the fact that he was up against an uncomfortable proposition. Indeed, his recollections, which have since been put on paper, sufficiently expose the thoughts which were running through his mind. He records that, "In the latter part of June and the early days of July, the Germans, with the industry with which they aim to make their navy efficient, were keeping very busy. I saw that they did not mean to accept my interpretation of the laws of blockade. German officers frequently landed in Manila, where they were on the most cordial terms with the Spaniards, who paid them marked attention; and, the wish fathering the thought, the talk of the town was that the Germans would intervene in favour of Spain. It was well-known that Vice-Admiral von Diedrichs had officially visited the Spanish Captain-General in Manila, who had returned the call at night. No other senior foreign officer

had exchanged visits with the Captain-General. Other Spanish officials called on the Germans and were saluted by the German vessels, these salutes being returned by the Spanish batteries on shore; but they did not call on the other senior officers present, so far as I know, and certainly were not saluted if they did. One foreign consul in Manila, I know, had orders from his Government to report the actions of the Germans in cipher.

“Not only did the German officers frequently visit the Spanish troops and outposts, thus familiarising themselves with the environs of Manila, but a Prince Löwenstein was taken off to the ‘Kaiserin Augusta’ by one of Aguinaldo’s staff. This came to our knowledge through the fact that the prince and his escort had to seek refuge on board an English man-of-war in a heavy sea. German men-of-war boats took soundings off Malabon and the mouth of the Pasig River, and German seamen were sent to occupy the lighthouse at the mouth of the Pasig for some days.”

Admiral Dewey has given to the world extracts from the log of his flagship, revealing “the activities of the German ships, which were continually cruising about the Bay and running in and out.”

“ June 27.—‘ Irene ’ returned from Mariveles. During first watch at night saw searchlight at entrance of bay. ‘ Kaiserin Augusta ’ got under way from Manila anchorage and stood down the bay.

“ June 28.—‘ Kaiser ’ came in.

“ June 29.—‘ Irene ’ got under way, steamed about the upper bay and returned. Later again left the harbour. ‘ Prinzess Wilhelm ’ came in and anchored. ‘ Cormoran ’ got under way and stood down to Mariveles.

“ June 30.—‘ Kaiserin Augusta ’ came in and anchored off Manila. ‘ Callao ’ was sent over to Manila to board her. ‘ Trinidad ’ with coal for German Squadron arrived.

“ July 1.—‘ Cormoran ’ and ‘ Prinzess Wilhelm ’ came in.

“ July 2.—‘ Cormoran ’ and German collier left.

“ July 3.—‘ Kaiser ’ left harbour.

“ Finally, without my permission, they landed their men for drill at Mariveles harbour, opposite Corregidor and Boca Chica, at the entrance of the bay, and took possession of the quarantine station, while Admiral von Diedrichs occupied a large house which had been the quarters of the Spanish officials. On July 5

I hoisted my flag on the 'McCulloch' and steamed round the German ships anchored in Mariveles, without, however, communicating with the German Admiral, while I trusted that he might understand that I did not view his proceedings with favour."

From day to day the situation became more strained. The Germans persisted in setting at nought all the laws of blockade. Continuing his narrative Admiral Dewey records:—"On the 6th I was informed by the insurgents that the Germans had been interfering with their operations against the Spaniards in Subig Bay. This was, of course, contrary to my policy to allow the insurgents to weaken the Spaniards as far as possible, and it was, besides, a breach of neutrality by a neutral power. I despatched the 'Raleigh' and 'Concord' to Subig to inquire into the truth of this report. They found a force of Spanish troops intrenched on Isla Grande, and under siege by the insurgents. There was not a German subject in the place. When the German cruiser 'Irene' appeared, her captain had visited the Spaniards, and then informed the insurgents that they might not use a small steamer which was in their possession to assist in their operations against the Spaniards. However, when the 'Raleigh' and 'Concord'

steamed into the harbour at daylight, the 'Irene' steamed out. Captain J. B. Coghlan, of the 'Raleigh,' being the senior officer present, concluded that Isla Grande, on account of its strategic importance in commanding the entrance to Subig Bay (which might furnish Camara a refuge if he should escape us), ought not to be in the possession of the enemy. After we fired a few shots from the light guns of the two cruisers, the Spaniards, six officers and five hundred men, surrendered. As Coghlan had no means of caring for the prisoners, he turned them over temporarily to the insurgents, with express instructions that they must be well treated."

At length the American Admiral determined to bring the matter to an issue. It was apparent that the Germans had received instructions to dispute the blockade.

"Already there had been correspondence between us, in which, in keeping with the accepted authorities on international law, including the German Perels, who had lectured at the Imperial German Naval Academy at Kiel, I maintained my right of blockade in boarding all vessels, including men-of-war. Or, in my own words, in one letter to Admiral Diedrichs: 'As a state of war exists between the United

States and Spain, and as the entry into this blockaded port of the vessels of war of a neutral is permitted by the blockading squadron as a matter of international courtesy, such neutrals should necessarily satisfy the blockading vessels as to their identity. I distinctly disclaim any intention of exercising or claiming the *droite de visite* of neutral vessels of war. What I do claim is the right to communicate with all vessels entering this port, now blockaded with the forces under my command. It could easily be possible that it was the duty of the picket vessel to notify incoming men-of-war that they could not enter the port, not on account of the blockade, but the intervention of my lines of attack."

Vice-Admiral von Diedrichs "banked" on the suspicion with which neutrals usually regard a blockade, and appeared to have assumed that he would have the support of the senior British officer present, Captain Sir Edward Chichester, Bart. So he denied the American right, remarking that he should consult the other senior officers present. He did not know the British Navy, and he was probably unaware that it still cherished the memory of an incident which occurred in the middle of the nineteenth century in Chinese waters. Perhaps he thought that the celebrated "blood is thicker than water"

incident, had been forgotten by the British service. There he was wrong. The story bears re-telling if we would understand the judicial, even more than judicial, attitude which Captain Chichester assumed when the German Admiral asked him to join in a protest against the measure of blockade which Admiral Dewey had announced. Flag-Officer Josiah Tatnall, who had won fame by a brilliant exploit at Vera Cruz in the war with Mexico, and won more later as a Confederate officer, witnessing the heavy fire which the British chartered steamer "Toey-wan" was suffering from the Chinese forts in the Pei River, decided that he could not keep out of the fight. Turning to a junior officer he exclaimed, "Blood is thicker than water," and ordered his boat to be manned, and with his own crew took the place of fallen British gunners in firing on the Chinese. Afterwards he used the "Toey-wan" in towing up the British reserves for the storming party that attacked the forts.

When the German Admiral reached the British cruiser, full up to the neck with arguments against Admiral Dewey's action, he was received with courtesy. The narrative is given in the "Life of Admiral Robley Evans": "The English and Japanese vessels lay off Cavite,

not far from the American Squadron. The feeling existed on board our ships that the Germans might fire upon them—the U.S. ships—during the bombardment of the city, but if anything of the kind was contemplated—and let us presume that no such intention existed—it was perhaps blocked by the action of Captain Chichester, the senior British naval officer, in placing his command during the bombardment between them and Dewey.” Captain Chichester has described his relations with Admiral von Diederichs: “When the German admiral sent me word that he was coming aboard my ship to get me to join in a protest against Dewey’s action,” Sir Edward said, “I looked up international law and spread the books out on my cabin table with the pages open and marked—all in a row—and when he came, I said: ‘What can I do? This American Admiral is so deadly right in all that he has done and all he proposes to do that if we protest we will merely show that we do not understand the law.’ Of course, there was nothing to be done, and I did it.”

Does any moral hang to this incident? The reader may draw his own conclusions. It may be suggested that it carried proof of the respect with which the British and American navies regard each other, and the respect with

which they regard the usages of war, subject to variation in accordance with circumstances. Owing in the main to the support given by Sir Edward Chichester, the German scheme, whatever it was, was defeated. The British Government was saved from an embroilment which might have had most unhappy results, and the American nation from a contretemps which would have proved a further embarrassment at a time of no little difficulty. Captain Chichester may have been right or wrong in his interpretation of the law of blockade; the German Admiral, "by order of the Kaiser," concluded that he was wrong. The British officer judged the matter broadly, and brushed aside the German Admiral's detailed criticisms and objections. He realised that the conditions applying to a blockade are never the same. They change in accordance with geographical conditions, and the application of physical science to naval warfare—gunnery, the torpedo or the submarine. Sir Edward's sympathies were with the American Admiral, and, fully conscious that the usages of blockade must be varied from time to time, he had no hesitation in throwing all the weight of the greatest navy in the world against the proposals put forward by the German Admiral.

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